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10/731,795	12/09/2003	Terry S. Bienstock	007412.00101	4949
71867 7590 03/05/2010 BANNER & WITCOFF, LTD ATTORNEYS FOR CLIENT NUMBER 007412 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051				
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PARRA, OMAR S				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/731,795

Applicant(s)

BIENSTOCK, TERRY S.

Examiner

OMAR PARRA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/22)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

1. Applicant's arguments with respect to claims **1-19** have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims **18 and 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenworthy (Pub. No. 2004/0255333) in view of Matz et al. (hereinafter 'Matz', Pub. No. 2009/0292703).

Regarding claim 18, teaches a method for use in a cable television network the method comprising:

providing a channel in a channel lineup for a local area ([0041]; [0047]; [0048]);

providing backdrop programming on the channel **(the general local interest content from central aggregation headend through interface 112;** [0022]-[0024]; [0035]; [0038]);

determining an availability of locally produced programming; and
determining that the locally produced programming is available and intended for

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local transmission, preempting the backdrop programming and providing the locally produced programming on the channel **(Kenworthy teaches that the content produced locally (including content for local channels, advertising, video-on-demand, etc) is introduced to the received national bundle from the national headend ([0030]-[0032]; [0041]-[0044]).**

On the other hand, Kenworthy does not explicitly teach the preempting of the backdrop programming is unconditional and that it is in response of the determination of the availability of the locally produced content.

However, in an analogous art, Matz teaches a merge processor (104, Fig. 1) at a cable headend (102, Fig. 1) that receives national content (114, 116 and 118, Fig. 1; [0042]) and local content (106, 108, 110; Fig. 1; [0041]) to determine which content will be available via a channel ([0061]). The merger processor determines if locally content is available (406, Fig. 4) and if it is available (insert the local programming or local advertisement (408, Fig. 4). If there is no local programming/advertising, National programming/advertising is inserted (412, Fig. 4). This can be seen in Fig. 3A where availability of the national and local programming/advertising at different times is shown ([0059]; [0060]). Fig. 3B shows what was actually presented to the user ([0067]). Following the flow chart on Fig. 4, it is easy to notice that local programming/advertising takes priority when it is available. The preemption of the local programming over national content is unconditional since the only 'condition' to present it is its availability (406, Fig. 3).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Kenworthy's invention with Matz's unconditionally preempting local content to content received from a national headend for the benefit of presenting and promoting locally produced content of general interest to population in a given region or zone.

Regarding claim 19, Kenworthy teaches a method for use in television network, the method comprising:

providing a channel in the channel lineup for each local area ([0041]; [0047]; [0048]. **This is performed on multiple local areas, markets A-C, Figs. 1, Abstract**);

providing backdrop programming on each channel **(the general local interest content from central aggregation headend through interface 112; [0022]-[0024]; [0035]; [0038])**;

for each local area **(This is performed on multiple local areas, markets A-C, Figs. 1, Abstract)**, determining an availability of locally produced PEG programming; and determining that the locally produced programming is available and intended for local transmission in a particular local area having the channel, preempting the backdrop programming and providing the locally produced programming on the channel in the particular local area thereby.

channel **(Kenworthy teaches that the content produced locally (including content for local channels, advertising, video-on-demand, etc) is**

introduced to the received national bundle from the national headend ([0030]-[0032]; [0041]-[0044]).

On the other hand, Kenworthy does not explicitly teach the preempting of the backdrop programming is unconditional and that it is in response of the determination of the availability of the locally produced content.

However, in an analogous art, Matz teaches a merge processor (104, Fig. 1) at a cable headend (102, Fig. 1) that receives national content (114, 116 and 118, Fig. 1; [0042]) and local content (106, 108, 110; Fig. 1; [0041]) to determine which content will be available via a channel ([0061]). The merger processor determines if locally content is available (406, Fig. 4) and if it is available (insert the local programming or local advertisement (408, Fig. 4). If there is no local programming/advertising, National programming/advertising is inserted (412, Fig. 4). This can be seen in Fig. 3A where availability of the national and local programming/advertising at different times is shown ([0059]; [0060]). Fig. 3B shows what was actually presented to the user ([0067]). Following the flow chart on Fig. 4, it is easy to notice that local programming/advertising takes priority when it is available. The preemption of the local programming over national content is unconditional since the only 'condition' to present it is its availability (406, Fig. 3).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Kenworthy's invention with Matz's unconditionally preempting local content to content received from a national

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headend for the benefit of presenting and promoting locally produced content of general interest to population in a given region or zone.

4. Claims **1-17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenworthy (Pub. No. 2004/0255333) in view of Matz et al. (hereinafter 'Matz', Pub. No. 2009/0292703) in further view of Hane (Pub. No. 2006/0041921).

Regarding claim 1, Kenworthy teaches a method for use in a television network, the method comprising:

providing a channel in a channel lineup for a local area ([0041]; [0047]; [0048]);

providing backdrop programming **(the general local interest content from central aggregation headend through interface 112; [0022]-[0024]; [0035]; [0038]);**

determining an availability of locally produced programming; and
determining that the locally produced programming is available and intended for local transmission, preempting the backdrop programming and providing the locally produced programming on the channel **(Kenworthy teaches that the content produced locally (including content for local channels, advertising, video-on-demand, etc) is introduced to the received national bundle from the national headend ([0030]-[0032]; [0041]-[0044]).**

On the other hand, Kenworthy does not explicitly teach the preempting of the backdrop programming is unconditional and that it is in response of the determination of the availability of the locally produced content.

However, in an analogous art, Matz teaches a merge processor (104, Fig. 1) at a cable headend (102, Fig. 1) that receives national content (114, 116 and 118, Fig. 1; [0042]) and local content (106, 108, 110; Fig. 1; [0041]) to determine which content will be available via a channel ([0061]). The merger processor determines if locally content is available (406, Fig. 4) and if it is available (insert the local programming or local advertisement (408, Fig. 4). If there is no local programming/advertising, National programming/advertising is inserted (412, Fig. 4). This can be seen in Fig. 3A where availability of the national and local programming/advertising at different times is shown ([0059]; [0060]). Fig. 3B shows what was actually presented to the user ([0067]). Following the flow chart on Fig. 4, it is easy to notice that local programming/advertising takes priority when it is available. The preemption of the local programming over national content is unconditional since the only 'condition' to present it is its availability (406, Fig. 3).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Kenworthy's invention with Matz's unconditionally preempting local content to content received from a national headend for the benefit of presenting and promoting locally produced content of general interest to population in a given region or zone.

Additionally, Kenworthy and Matz do not explicitly teach that the locally produced content is PEG (public, educational and governmental) content.

However, in an analogous art, Hane teaches a system and method for distributing national and locally produced content, where availability of local or regional content is checked and inserted to be presented to the users after a commitment of transmission (Abstract; [0050]-[0051]; [0057]-[0058]; [0067]-[0070]). The content is not limited to ads as used in the cited example, but locally produced news updates, political content programs, data, etc ([0043]-[0045]; [0076]-[0078]). Additionally, Hane teaches that any person or entity is able to post content but after approval ([0043]-[0045];[0076]-[0078]; [0081]).

Therefore, it would have been obvious to an ordinary skilled in the art at the time of the invention to have modified the feature of Kenworthy and Matz's invention with Hane's feature of checking for locally produced PEG content and insert it to the national content for the benefit of presenting and promoting locally produced content of general interest to population in a given region or zone.

Regarding claims 2 and 9, Kenworthy, Matz and Hane teach wherein the locally produced PEG programming is created via local public access to the television network (**Hane: [0076]-[0078]**).

Regarding claims 3 and 10, Kenworthy, Matz and Hane teach wherein the locally produced PEG programming is created via educational access to the television network (**Hane: [0043]-[0045]; [0076]-[0078]**).

Regarding claims 4 and 11, Kenworthy, Matz and Hane teach wherein the locally produced PEG programming is created via local governmental access to the television network (**Hane: [0043]-[0045]; [0076]-[0078]**).

Regarding claims 5 and 12, Kenworthy, Matz and Hane teach wherein the television network encompasses a plurality of local areas, wherein (PEG) programming is provided on the PEG channel to the local and wherein the backdrop programming general local interest programming is provided on PEG channels for multiple local areas (**Kenworthy: [0024]; [0038]**).

Regarding claims 6 and 13, Kenworthy, Matz and Hane teach wherein the television network includes a video on demand (VOD) platform, the VOD platform including a library of locally produced PEG programming, the method further comprising providing locally produced PEG programming on demand with the VOD platform, wherein the locally produced PEG programming on demand is selectable by a subscriber (**Hane: The local content to be inserted to the cable programming can be on-demand, [0058]. All the local content is stored in local databases, [0058]. Kenworthy: [0041]; [0045], where being the content on demand for the user, it is inherent that the content is selectable by the user**).

Regarding claims 7 and 14, Kenworthy, Matz and Hane teach wherein the television network includes a high speed data (HSD) platform, the HSD platform including a library of locally produced PEG programming, the method further comprising providing locally produced PEG programming on demand with the HSD platform, wherein the locally produced PEG programming on demand is selectable by a subscriber **(Kenworthy: [0041]; [0045], where being the content on demand for the user, it is inherent that the content is selectable by the user. Hane: 20, Fig. 1; [0036]; [0043]; [0058]. All the local content is stored in local databases, [0058]).**

Regarding claim 8, Kenworthy teaches a method for use in television network, the method comprising:

providing a channel in the channel lineup for each local area **([0041]; [0047]; [0048]. This is performed on multiple local areas, markets A-C, Figs. 1, Abstract);**

providing backdrop programming on each channel **(the general local interest content from central aggregation headend through interface 112; [0022]-[0024]; [0035]; [0038]);**

for each local area **(This is performed on multiple local areas, markets A-C, Figs. 1, Abstract)**, determining an availability of locally produced PEG programming; and determining that the locally produced programming is available and intended for local transmission in a particular local area having the

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channel, preempting the backdrop programming and providing the locally produced programming on the channel in the particular local area thereby.

channel (Kenworthy teaches that the content produced locally (including content for local channels, advertising, video-on-demand, etc) is introduced to the received national bundle from the national headend ([0030]-[0032]; [0041]-[0044]).

On the other hand, Kenworthy does not explicitly teach the preempting of the backdrop programming is unconditional and that it is in response of the determination of the availability of the locally produced content.

However, in an analogous art, Matz teaches a merge processor (104, Fig. 1) at a cable headend (102, Fig. 1) that receives national content (114, 116 and 118, Fig. 1; [0042]) and local content (106, 108, 110; Fig. 1; [0041]) to determine which content will be available via a channel ([0061]). The merger processor determines if locally content is available (406, Fig. 4) and if it is available (insert the local programming or local advertisement (408, Fig. 4). If there is no local programming/advertising, National programming/advertising is inserted (412, Fig. 4). This can be seen in Fig. 3A where availability of the national and local programming/advertising at different times is shown ([0059]; [0060]). Fig. 3B shows what was actually presented to the user ([0067]). Following the flow chart on Fig. 4, it is easy to notice that local programming/advertising takes priority when it is available. The preemption of the local programming over national content is unconditional since the only 'condition' to present it is its availability (406, Fig. 3).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Kenworthy's invention with Matz's unconditionally preempting local content to content received from a national headend for the benefit of presenting and promoting locally produced content of general interest to population in a given region or zone.

Additionally, Kenworthy and Matz do not explicitly teach that the locally produced content is PEG (public, educational and governmental) content.

However, in an analogous art, Hane teaches a system and method for distributing national and locally produced content, where availability of local or regional content is checked and inserted to be presented to the users after a commitment of transmission (Abstract; [0050]-[0051]; [0057]-[0058]; [0067]-[0070]). The content is not limited to ads as used in the cited example, but locally produced news updates, political content programs, data, etc ([0043]-[0045]; [0076]-[0078]). Additionally, Hane teaches that any person or entity is able to post content but after approval ([0043]-[0045]; [0076]-[0078]; [0081]).

Therefore, it would have been obvious to an ordinary skilled in the art at the time of the invention to have modified the feature of Kenworthy and Matz's invention with Hane's feature of checking for locally produced PEG content and insert it to the national content for the benefit of presenting and promoting locally produced content of general interest to population in a given region or zone.

Regarding claim 15, Kenworthy teaches an apparatus (with respective method) for signal distribution in a television network (**115, Fig. 3**) comprising:

an interface that is configured to receive backdrop programming_ from a first source and to receive locally produced content from a second source (308, **Fig. 3 receives the general local interest content from central aggregation headend through interface 112 and locally produced content from local content providers 108 and 202, Fig. 3 through 107, 314 and 316; [0042]-[0043];**

a processing module (**network management system, 402**) configured to be connected to the interface and configured to perform:

providing a channel in a channel lineup for a local area ([0041]; [0047]; [0048]);

providing the backdrop programming on the channel from the first source (**the general local interest content from central aggregation headend through interface 112; [0022]-[0024]; [0035]; [0038];**

determining an availability of the locally produced content from the second source; and_determining that the locally produced content is available and intended for local transmission, preempting the backdrop programming and providing the locally produced content on the channel (**Kenworthy teaches that the content produced locally (including content for local channels, advertising, video-on-demand, etc) is introduced to the received national bundle from the national headend ([0030]-[0032]; [0041]-[0044]).**

On the other hand, Kenworthy does not explicitly teach the preempting of the backdrop programming is unconditional and that it is in response of the determination of the availability of the locally produced content.

However, in an analogous art, Matz teaches a merge processor (104, Fig. 1) at a cable headend (102, Fig. 1) that receives national content (114, 116 and 118, Fig. 1; [0042]) and local content (106, 108, 110; Fig. 1; [0041]) to determine which content will be available via a channel ([0061]). The merger processor determines if locally content is available (406, Fig. 4) and if it is available (insert the local programming or local advertisement (408, Fig. 4). If there is no local programming/advertising, National programming/advertising is inserted (412, Fig. 4). This can be seen in Fig. 3A where availability of the national and local programming/advertising at different times is shown ([0059]; [0060]). Fig. 3B shows what was actually presented to the user ([0067]). Following the flow chart on Fig. 4, it is easy to notice that local programming/advertising takes priority when it is available. The preemption of the local programming over national content is unconditional since the only 'condition' to present it is its availability (406, Fig. 3).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Kenworthy's invention with Matz's unconditionally preempting local content to content received from a national headend for the benefit of presenting and promoting locally produced content of general interest to population in a given region or zone.

Additionally, Kenworthy and Matz do not explicitly teach that the locally produced content is PEG (public, educational and governmental) content.

However, in an analogous art, Hane teaches a system and method for distributing national and locally produced content, where availability of local or

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regional content is checked and inserted to be presented to the users after a commitment of transmission (Abstract; [0050]-[0051]; [0057]-[0058]; [0067]-[0070]). The content is not limited to ads as used in the cited example, but locally produced news updates, political content programs, data, etc ([0043]-[0045]; [0076]-[0078]). Additionally, Hane teaches that any person or entity is able to post content but after approval ([0043]-[0045]; [0076]-[0078]; [0081]).

Therefore, it would have been obvious to an ordinary skilled in the art at the time of the invention to have modified the feature of Kenworthy and Matz's invention with Hane's feature of checking for locally produced PEG content and insert it to the national content for the benefit of presenting and promoting locally produced content of general interest to population in a given region or zone.

Regarding claim 16, Kenworthy, Matz and Hane teach wherein:

the interface is configured to connect to a video on demand (VOD) platform, the VOD platform including a library of locally produced programming; and the processing module is further configured to perform providing locally produced programming on demand with the VOD platform, the locally produced programming on demand being selectable by a subscriber (**Kenworthy: [0041]; [0045], where being the content on demand for the user, it is inherent that the content is selectable by the user. Said content is stored at server 328, Fig. 3).**

Regarding claim 17, Kenworthy, Matz and Hane teach wherein:

the interface is configured to connect to a high speed data (HSD) platform, the HSD platform including a library of locally produced programming ([0041]; **where all local content, including video-on-demand stored at server 328, Fig. 3, is connected to the fiber 'last mile' –which is a high speed data medium- that serves/connects subscribers from local headend; [0046]**); and providing the locally produced programming on demand with the HSD platform, the locally produced programming on demand being selectable by a subscriber ([0041]; **where all local content, including video-on-demand stored at server 328, Fig. 3, is connected to the fiber 'last mile' –which is a high speed data medium- that serves/connects subscribers from local headend; [0046]. Additionally, being the content on the demand to the user, it is inherent that it is user selectable).**

The limitation where the local content is PEG content was addressed at the rejection of claim 15 above.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OMAR PARRA whose telephone number is (571)270-1449. The examiner can normally be reached on 9-6 PM (M-F, every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John W. Miller/
Supervisory Patent Examiner, Art Unit 2421

OP